

restrictions, area closures, establishment of special management areas or zones and any other management measures currently included in the FMP.

(c) *NEFMC recommendation.* After developing Atlantic salmon management measures and receiving public testimony, the NEFMC shall make a recommendation to NMFS. The NEFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to NMFS on whether to issue the management measures as a final rule. If NMFS concurs with the NEFMC's recommendation to issue the management measures as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended management measures.

(3) Whether there is an immediate need to protect the resource.

(4) Whether there will be a continuing evaluation of measures adopted following their implementation as a final rule.

(d) *NMFS action.* If the NEFMC's recommendation includes implementation of management measures and, after reviewing the NEFMC's recommendation and supporting information:

(1) NMFS concurs with the NEFMC's recommended management measures and determines that the recommended measures should be issued as a final rule based on the factors specified in paragraph (c)(1) through (4) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(2) NMFS concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be pub-

lished as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the NEFMC recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(3) NMFS does not concur, the NEFMC will be notified in writing of the reasons for the non-concurrence.

(e) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[64 FR 40520, July 27, 1999]

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

§ 648.50 Shell-height standard.

(a) *Minimum shell height.* The minimum shell height for in-shell scallops that may be landed, or possessed at or after landing, is 3.5 inches (89 mm). Shell height is a straight line measurement from the hinge to the outermost part of the shell, that is, the edge farthest away from the hinge.

(b) *Compliance and sampling.* Compliance with the minimum shell-height standard will be determined by inspection and enforcement at or after landing, including the time when the scallops are received or possessed by a dealer or person acting in the capacity of a dealer as follows: An authorized officer will take samples of 40 scallops each, at random, from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than 10 percent of all scallops sampled are less than the shell height specified. The total amount of scallops in possession will be deemed in violation of this subpart and subject to forfeiture, if the sample group fails to comply with the standard. All scallops will be subject to inspection and enforcement, in accordance with these compliance and sampling procedures, up to and including the time when a dealer receives or possesses scallops for a commercial purpose.